

IN THE DISTRICT COURT OF THE VIRGIN ISLANDS

NEW TRANSCRIPT POLICY

Effective 5/12/08

At its September 2007 session, the U.S. Judicial Conference approved a new policy regarding the availability of transcripts of court proceedings. A new release of CM/ECF, Version 3.2, includes software that facilitates the implementation of this policy.

I. Summary

The language from the Judicial Conference's September 2007 session states:

- (1) A transcript provided to a court by a court reporter or transcriber will be available at the office of the clerk of court for inspection only, for a period of 90 days after it is delivered to the clerk.
- (2) During the 90-day period, a copy of the transcript may be obtained from the court reporter or transcriber at the rate established by the Judicial Conference, the transcript will be available within the court for internal use, and an attorney who obtains the transcript from the court reporter or transcriber may obtain a remote electronic access to the transcript through the court's CM/ECF system for purposes of creating hyperlinks to the transcript in court filings and or other purposes.
- (3) After the 90-day period has ended, the filed transcript will be available for inspection and copying in the clerk's office and or download from the court's CM/ECF system through the judiciary's PACER system.

When the new transcript policy is implemented, transcripts must be compliant with the new Federal Privacy Rules, Civ. 5.2 and Crim. 49.1. The Judicial Conference approved procedures for applying redaction requirements to transcripts of court proceedings and the new CM/ECF Version 3.2 has been designed to include those procedures.

Under 28 U.S.C. § 753(b), the court reporter or transcriber must deliver promptly a certified copy of any transcript made to the clerk of court for the records of the court. The Notice of Electronic Filing (NEF) informs parties and attorneys of record of the 90-day

restriction and how to obtain the transcript during the restriction period. The date when the transcript is submitted is the starting point for all deadlines related to the transcript.¹

During the 90-day period (which may be extended by the court), access to the transcript in CM/ECF is restricted to four types of users:

- Court staff;
- Public terminal users;
- Attorney of record or parties who have purchased the transcript from the court reporter/transcriber; and
- Other persons as directed by the court, e.g., appellate attorneys.

Except for public terminal viewers, persons authorized to view or download the transcript can also create hyperlinks to the transcript.

II. Overview of the Process within CM/ECF

The clerk will enter a Notice of Filing of Official Transcript when a transcript is delivered to the clerk for the court's record. This notice includes language that indicates that parties have 5² business days to file with the court a Notice of Intent to Request Redaction of this transcript. This notice is transmitted to the parties via the NEF. Redaction responsibilities apply to the attorneys even if the requestor of the transcript is a judge or a member of the public/media.

Court reporters will email a PDF version of the transcript to the clerk's office for docketing.

Any party needing to review the transcript for redaction purposes may purchase a copy from the court reporter/transcriber or view the transcript at the courthouse using the public terminal to CM/ECF. If a party purchases the transcript from the court reporter, and he or she is an attorney on the case, he or she will be given remote access to the transcript via CM/ECF and PACER. This access is provided via a utility program in CM/ECF. PACER fees apply at all times when accessing transcripts remotely.

¹ Note: The special redaction procedures for transcripts and the 90-day restriction policy apply only to transcripts of federal courtroom proceedings.

² Currently pending before the Judicial Conference is a recommendation to enlarge this time frame to 7 calendar days

The clerk's office will grant the access upon notification from the court reporter that payment was received.

Within 5 business days³ of the filing in CM/ECF of the official transcript, each party wishing to redact a transcript must inform the court, by filing a notice with the clerk, of the party's intent to redact personal data identifiers, as required by Fed.R.Crim.P. 49.1 and Fed.R.Civ.P. 5.2 from the electronic transcript of the court proceedings. If no such notice is filed within the allotted time, the court will assume redaction of personal identifiers from the transcript is not necessary.

Unless otherwise ordered by the court, the attorney must review the following portions of the transcript:

- Opening and closing statements made on the party's behalf;
- Statements of the party;
- The testimony of any witnesses called by the party; and
- Any other portion of the transcript as ordered by the court.⁴

Only those identifiers listed in the rules can be redacted through this part of the process: Social Security numbers; financial account numbers; name of minor children; dates of birth; and home address of individuals.

If the transcript relates to a CJA representation, the attorney conducting the review is entitled to compensation under the CJA for functions reasonably performed to fulfill the redaction obligation and for reimbursement for related reasonable expenses.

If redaction is requested, a party is to submit to the court reporter or transcriber, within 21 calendar days of the transcript's delivery to the clerk, or longer if a court so orders, a statement indicating where the personal identifiers to be redacted appear in the transcript. The court reporter or transcriber must redact the identifiers as directed by the party. These procedures are limited to the redaction of the specific personal data identifiers listed in the rules. If an attorney wishes to redact additional information, he or she may make a motion to the court. The transcript will not be electronically available until the court has ruled on any such motion, even though the 90-day restriction period may have ended.

³ See Footnote 2.

⁴ Currently pending before the Judicial Conference is a recommendation to add a requirement that attorneys must specifically review "any transcript of a sentencing proceeding."

The court reporter or transcriber must, within 31 calendar days of the delivery of the transcript to the clerk, or longer if the court so orders, perform the requested redactions, and file a redacted version of the transcript with the clerk. The original unredacted electronic transcript will be retained by the clerk as a restricted document. The court will monitor this deadline to ensure that the redacted transcript is available for the parties and attorneys should there be an appeal

III. General Issues

1. Purchase of the Transcript by the Public/Media

Members of the public, including the news media, who purchase a transcript from the court reporter within the 90-day restriction period, will not be granted remote electronic access during the restriction period. At the end of the restriction period, the public will be provided remote electronic access to the redacted transcript, or, if no redaction was done, to the transcript originally submitted, unless it was under seal.

2. Miscellaneous Issues

If only part of the transcript is ordered, an attorney is not responsible for ordering and reviewing other parts of the proceedings.

Court reporters/transcribers are not responsible for the identification of the need for or redaction of the transcripts. Redaction will be accomplished only with input from the attorneys who represent the parties in the case. Attorneys are required to list the information to be redacted by page and line number, which will reduce the work and errors on the part of the court reporter/transcriber.

The redaction-related documents (e.g., notice of intent to redact, etc.) should be in the court record to ensure that the changes to the transcript are documented and are available both to the court in which the transcript was created and the appellate court (for potential orders regarding any delay).

There is no obligation on the part of the clerk's office to perform any redaction. Instead, it rests on the attorneys to tell the court reporter where to redact, and on the court reporter to perform the redaction.